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MOSEL VITELIC INC. and
MOSEL VITELIC CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STATE OF NEW YORK,

Plaintiff,

v.

MICRON TECHNOLOGY, et al.,

Defendant.

Case No. C 06-6436 PJH

**MOSEL VITELIC INC. AND
MOSEL VITELIC
CORPORATION'S AMENDED
ANSWER TO AMENDED
COMPLAINT**

JURY TRIAL DEMAND

The Honorable Phyllis J. Hamilton

Answering the Amended Complaint, filed herein on October 1, 2007,
Defendants Mosel Vitelic Inc. ("MVI") and Mosel Vitelic Corporation ("MVC")
(collectively "Mosel") respond as follows:

The prefatory paragraphs to the Amended Complaint include legal
conclusions and characterizations of the allegations in the Amended Complaint that
are not averments of facts to which a response is required. To the extent a response
is required, Mosel admits that New York has brought this action seeking the

1 specified relief. Mosel denies the remaining statements in the prefatory paragraphs
2 to the Amended Complaint.

3 INTRODUCTION

4 1. Mosel admits that the Amended Complaint alleges a price-fixing
5 conspiracy related to the market for DRAM. Mosel denies that it engaged in such
6 an alleged conspiracy. Except as so stated, Mosel lacks knowledge or information
7 sufficient to form a belief as to the truth of the allegations in paragraph 1 of the
8 Amended Complaint, and therefore denies them.

9 2. Mosel denies the allegations in paragraph 2 of the Amended
10 Complaint.

11 3. Mosel denies the allegations in paragraph 3 of the Amended
12 Complaint as they relate to Mosel. Mosel avers that it lacks knowledge or
13 information sufficient to form a belief as to the truth of the allegations in paragraph
14 3 of the Amended Complaint as they relate to other Defendants, and therefore
15 denies them.

16 4. Mosel admits in information and belief that certain DRAM
17 manufacturers, not including Mosel, and certain of their employees have pleaded
18 guilty to criminal charges related to the DRAM industry. Except as so stated,
19 Mosel lacks knowledge or information sufficient to form a belief as to the truth of
20 the allegations in paragraph 4 of the Amended Complaint, and therefore denies
21 them. To the extent that paragraph 4 purports to quote from a document, Mosel
22 refers the Court to the text of that document.

23 5. Mosel admits that New York seeks both monetary and equitable relief
24 in this action. Except as so stated, Mosel denies the allegations in paragraph 5 of
25 the Amended Complaint.

26 JURISDICTION AND VENUE

27 6. Mosel admits that paragraph 6 of the Amended Complaint purports to
28 invoke the statutes referred to therein, and seeks the remedies listed therein.

1 Excepts as so stated, Mosel avers that the allegations in paragraph 6 of the
2 Amended Complaint constitute legal contentions and conclusions to which no
3 response is required. To the extent a response is required, Mosel avers that it lacks
4 knowledge or information sufficient to form a belief as to the truth of the
5 allegations in paragraph 6 of the Amended Complaint, and therefore denies them.

6 7. Mosel avers that the allegations in paragraph 7 of the Amended
7 Complaint constitute legal contentions and conclusions to which no response is
8 required. To the extent a response is required, Mosel avers that it lacks knowledge
9 or information sufficient to form a belief as to the truth of the allegations in
10 paragraph 7 of the Amended Complaint, and therefore denies them.

11 8. Mosel avers that the allegations in paragraph 8 of the Amended
12 Complaint constitute legal contentions and conclusions to which no response is
13 required. To the extent a response is required, Mosel avers that it lacks knowledge
14 or information sufficient to form a belief as to the truth of the allegations in
15 paragraph 8 of the Amended Complaint, and therefore denies them.

16 9. Mosel avers that the allegations in paragraph 9 of the Amended
17 Complaint constitute legal contentions and conclusions to which no response is
18 required. To the extent a response is required, Mosel avers that it lacks knowledge
19 or information sufficient to form a belief as to the truth of the allegations in
20 paragraph 9 of the Amended Complaint, and therefore denies them.

21 **THE PARTIES**

22 10. Mosel admits that Plaintiff, the State of New York purports to state the
23 claims in the Amended Complaint in the capacities described and under the statutes
24 cited in the first and second sentences of paragraph 10 of the Amended Complaint.
25 The allegations in the last sentence of paragraph 10 of the Amended Complaint
26 define the terms of the Amended Complaint and are not averments of fact for which
27 a response is required. Except as so stated, Mosel lacks knowledge or information
28 sufficient to form a belief as to the truth of the allegations in paragraph 10 of the

1 Amended Complaint, and therefore denies them.

2 11. Mosel admits on information and belief that Micron Technology, Inc.
3 is a Delaware corporation with its principal place of business in Boise, Idaho, and
4 that it was a seller of DRAM during the time period covered by the Amended
5 Complaint. Except as so stated, Mosel avers that it lacks knowledge or information
6 sufficient to form a belief as to the truth of the allegations in paragraph 11 of the
7 Amended Complaint, and therefore denies them.

8 12. Mosel admits on information and belief that Micron Semiconductor
9 Products, Inc. is an Idaho corporation with its principal place of business in Boise,
10 Idaho, and that it was a seller of DRAM during the time period covered by the
11 Amended Complaint. Except as so stated, Mosel avers that it lacks knowledge or
12 information sufficient to form a belief as to the truth of the allegations in paragraph
13 12 of the Amended Complaint, and therefore denies them.

14 13. Mosel admits on information and belief that Infineon Technologies
15 AG has offices in Germany and that it was a seller of DRAM during the time period
16 covered by the Amended Complaint. Except as so stated, Mosel avers that it lacks
17 knowledge or information sufficient to form a belief as to the truth of the
18 allegations in paragraph 13 of the Amended Complaint, and therefore denies them.

19 14. Mosel admits on information and belief that Infineon Technologies
20 North America Corp. has offices in California and that it was a seller of DRAM
21 during the time period covered by the Amended Complaint. Except as so stated,
22 Mosel avers that it lacks knowledge or information sufficient to form a belief as to
23 the truth of the allegations in paragraph 14 of the Amended Complaint, and
24 therefore denies them.

25 15. Mosel admits on information and belief that Hynix Semiconductor,
26 Inc. has offices in Korea and that it was a seller of DRAM during the time period
27 covered by the Amended Complaint. Except as so stated, Mosel avers that it lacks
28 knowledge or information sufficient to form a belief as to the truth of the

1 allegations in paragraph 15 of the Amended Complaint, and therefore denies them.

2 16. Mosel admits on information and belief that Hynix Semiconductor
3 America, Inc. has offices in San Jose, California, and that it was a seller of DRAM
4 during the time period covered by the Amended Complaint. Except as so stated,
5 Mosel avers that it lacks knowledge or information sufficient to form a belief as to
6 the truth of the allegations in paragraph 16 of the Amended Complaint, and
7 therefore denies them.

8 17. Mosel admits on information and belief that Samsung Electronics Co.,
9 Ltd. has offices in Korea and that it was a seller of DRAM during the time period
10 covered by the Amended Complaint. Except as so stated, Mosel avers that it lacks
11 knowledge or information sufficient to form a belief as to the truth of the
12 allegations in paragraph 17 of the Amended Complaint, and therefore denies them.

13 18. Mosel admits on information and belief that Samsung Semiconductor,
14 Inc. has offices in California and that it was a seller of DRAM during the time
15 period covered by the Amended Complaint. Except as so stated, Mosel avers that it
16 lacks knowledge or information sufficient to form a belief as to the truth of the
17 allegations in paragraph 18 of the Amended Complaint, and therefore denies them.

18 19. Mosel admits that MVI is a Taiwan corporation headquartered at the
19 address listed in paragraph 19 of the Amended Complaint. Mosel admits that MVI
20 manufactured DRAM during a portion of the time period covered by the Amended
21 Complaint, and that it sold and distributed DRAM to customers in the United States
22 and elsewhere in the world. Except as so stated, Mosel denies the allegations in
23 paragraph 19 of the Amended Complaint.

24 20. Mosel admits that MVC is a California corporation located at the
25 address listed in paragraph 20 of the Amended Complaint. Mosel further admits
26 that MVC sold and distributed DRAM to customers in the United States during the
27 time period covered by the Amended Complaint. Except as so stated, Mosel denies
28 the allegations in paragraph 20 of the Amended Complaint.

1 21. Mosel admits on information and belief that Nanya Technology
2 Corporation has offices in Taiwan and that it was a seller of DRAM during the time
3 period covered by the Amended Complaint. Except as so stated, Mosel avers that it
4 lacks knowledge or information sufficient to form a belief as to the truth of the
5 allegations in paragraph 21 of the Amended Complaint, and therefore denies them.

6 22. Mosel admits on information and belief that Nanya Technology
7 Corporation, USA, has offices in California and that it was a seller of DRAM
8 during the time period covered by the Amended Complaint. Except as so stated,
9 Mosel avers that it lacks knowledge or information sufficient to form a belief as to
10 the truth of the allegations in paragraph 22 of the Amended Complaint, and
11 therefore denies them.

12 23. Mosel admits on information and belief that Elpida Memory, Inc. has
13 offices in Japan and that it was a seller of DRAM during the time period covered by
14 the Amended Complaint. Except as so stated, Mosel avers that it lacks knowledge
15 or information sufficient to form a belief as to the truth of the allegations in
16 paragraph 23 of the Amended Complaint, and therefore denies them.

17 24. Mosel admits on information and belief that Elpida Memory (USA),
18 Inc. has offices in California and that it was a seller of DRAM during the time
19 period covered by the Amended Complaint. Except as so stated, Mosel avers that it
20 lacks knowledge or information sufficient to form a belief as to the truth of the
21 allegations in paragraph 24 of the Amended Complaint, and therefore denies them.

22 25. Mosel admits on information and belief that NEC Electronics
23 America, Inc. has offices in California and that it was a seller of DRAM during the
24 time period covered by the Amended Complaint. Except as so stated, Mosel avers
25 that it lacks knowledge or information sufficient to form a belief as to the truth of
26 the allegations in paragraph 25 of the Amended Complaint, and therefore denies
27 them.

28 26. Mosel denies the allegations of paragraph 26 of the Amended

1 Complaint as they relate to Mosel. Mosel avers that it lacks knowledge or
2 information sufficient to form a belief as to the truth of the allegations in paragraph
3 26 of the Amended Complaint as they relate to other entities, and therefore denies
4 them.

5 27. Mosel denies the allegations of paragraph 27 of the Amended
6 Complaint as they relate to Mosel. Mosel avers that it lacks knowledge or
7 information sufficient to form a belief as to the truth of the allegations in paragraph
8 27 of the Amended Complaint as they relate to other Defendants, and therefore
9 denies them.

10 28. Mosel avers that it lacks knowledge sufficient to form a belief as to the
11 truth of the allegations in paragraph 28 of the Amended Complaint concerning the
12 activities of unnamed “others,” and on that basis denies the allegations concerning
13 such entities in paragraph 28 of the Amended Complaint. Except as so stated,
14 Mosel denies each and every allegation contained in paragraph 28 of the Amended
15 Complaint.

16 INTERSTATE COMMERCE

17 29. Mosel admits that it was involved in the manufacture, sale, and
18 distribution of DRAM during some portion of the time period covered by the
19 Amended Complaint. Mosel denies that it participated in the “illegal fixing and
20 coordination of [DRAM] prices” or any other illegal activity in connection with its
21 sale of DRAM. Except as so stated, Mosel avers that it lacks knowledge or
22 information sufficient to form a belief as to the truth of the allegations in paragraph
23 29 of the Amended Complaint, and therefore denies them. Specifically, Mosel
24 avers that it lacks sufficient information to respond to Plaintiffs’ allegations
25 regarding the “market” for DRAM, because the Amended Complaint does not
26 define or allege the relevant “market.”

27 DRAM

28 30. Mosel admits the allegations in paragraph 30 of the Amended

1 Complaint.

2 31. Mosel admits the allegations in paragraph 31 of the Amended
3 Complaint.

4 32. Mosel admits that DRAM is used to store data and instructions for
5 quick and random access in many types of computers and other electronic devices.
6 The allegations in the second sentence of paragraph 32 of the Amended Complaint
7 define the terms of the Amended Complaint and are not averments of fact for which
8 a response is required. To the extent a response is required, Mosel denies the
9 allegations in the second sentence of paragraph 32 of the Amended Complaint.

10 33. Mosel admits that “density” is an attribute of a DRAM chip that is
11 measured in “bits.” Mosel further admits that a unit of eight bits is defined in the
12 industry as a “byte.” Mosel further admits that as technology has progressed, chip
13 densities have generally increased, thereby increasing the amount of data that can
14 be stored on the same size chip. Except as so stated, Mosel avers that it lacks
15 knowledge or information sufficient to form a belief as to the truth of the
16 allegations in paragraph 33 of the Amended Complaint, and therefore denies them.

17 34. Mosel avers that it lacks knowledge or information sufficient to form a
18 belief as to the truth of the allegations in paragraph 34 of the Amended Complaint,
19 and therefore denies them.

20 35. Mosel denies the allegations in paragraph 35 of the Amended
21 Complaint.

22 36. Mosel admits that DRAM production facilities are known in the
23 industry as “fabs.” Mosel further admits that construction of a fab is a significant
24 investment. Except as so stated, Mosel avers that it lacks knowledge or information
25 sufficient to form a belief as to the truth of the allegations in paragraph 36 of the
26 Amended Complaint, and therefore denies them.

27 37. Mosel denies the allegations in paragraph 37 of the Amended
28 Complaint.

1 38. Mosel admits that DRAM chips are used in personal computers
2 manufactured by the companies listed in paragraph 38 of the Amended Complaint.
3 Except as so stated, Mosel avers that it lacks knowledge or information sufficient to
4 form a belief as to the truth of the allegations in paragraph 38 of the Amended
5 Complaint, and therefore denies them.

6 39. Mosel admits that some OEMs required a DRAM manufacturer's
7 chips to pass a testing and qualification process before the OEM would purchase
8 that manufacturer's product. Mosel further admits that DRAM is sold as either
9 individual chips or as modules. Except as so stated, Mosel avers that it lacks
10 knowledge or information sufficient to form a belief as to the truth of the
11 allegations in paragraph 39 of the Amended Complaint, and therefore denies them.

12 40. Mosel avers that it lacks knowledge or information sufficient to form a
13 belief as to the truth of the allegations in paragraph 40 of the Amended Complaint,
14 and therefore denies them.

15 41. Mosel avers that it lacks knowledge or information sufficient to form a
16 belief as to the truth of the allegations in paragraph 41 of the Amended Complaint,
17 and therefore denies them.

18 42. Mosel denies that it used "illegal means" to gain or maintain its
19 position in the DRAM market or engaged in any other illegal conduct. Except as so
20 stated, Mosel avers that it lacks knowledge or information sufficient to form a
21 belief as to the truth of the allegations in paragraph 42 of the Amended Complaint,
22 and therefore denies them.

23 43. Mosel admits that it engaged in market research that occasionally
24 included the collection of competitive pricing information. Except as so stated,
25 Mosel denies the allegations of paragraph 43 of the Amended Complaint as they
26 relate to Mosel and states that it lacks knowledge or information sufficient to form a
27 belief as to the truth of the allegations in paragraph 43 of the Amended Complaint
28 as they apply to other Defendants, and therefore denies them.

1 44. Mosel denies the allegations of paragraph 44 of the Amended
2 Complaint as they relate to Mosel. Mosel avers that it lacks knowledge or
3 information sufficient to form a belief as to the truth of the allegations in paragraph
4 44 of the Amended Complaint as they relate to other Defendants, and therefore
5 denies them.

6 45. Mosel denies the allegations of paragraph 45 of the Amended
7 Complaint as they relate to Mosel. Mosel avers that it lacks knowledge or
8 information sufficient to form a belief as to the truth of the allegations in paragraph
9 45 of the Amended Complaint as they relate to other Defendants, and therefore
10 denies them. To the extent that paragraph 45 purports to quote from a document or
11 testimony, Mosel refers the Court to the text of that document or original testimony.

12 46. Mosel avers that it lacks knowledge or information sufficient to form a
13 belief as to the truth of the allegations in paragraph 46 of the Amended Complaint,
14 and therefore denies them.

15 47. Mosel avers that it lacks knowledge or information sufficient to form a
16 belief as to the truth of the allegations in paragraph 47 of the Amended Complaint,
17 and therefore denies them. To the extent that paragraph 47 purports to quote from a
18 document or testimony, Mosel refers the Court to the text of that document or
19 original testimony.

20 48. Mosel denies the allegations of paragraph 48 of the Amended
21 Complaint as they relate to Mosel. Mosel avers that it lacks knowledge or
22 information sufficient to form a belief as to the truth of the allegations in paragraph
23 48 of the Amended Complaint as they relate to other Defendants, and therefore
24 denies them.

25 49. Mosel denies the allegations of paragraph 49 of the Amended
26 Complaint as they relate to Mosel. Mosel avers that it lacks knowledge or
27 information sufficient to form a belief as to the truth of the allegations in paragraph
28 49 of the Amended Complaint as they relate to other Defendants, and therefore

1 denies them. To the extent that paragraph 49 purports to quote from a document or
2 testimony, Mosel refers the Court to the text of that document or original testimony.

3 50. Mosel avers that it lacks knowledge or information sufficient to form a
4 belief as to the truth of the allegations in paragraph 50 of the Amended Complaint,
5 and therefore denies them. To the extent that paragraph 50 purports to quote from a
6 document, Mosel refers the Court to the text of that document.

7 51. Mosel avers that it lacks knowledge or information sufficient to form a
8 belief as to the truth of the allegations in paragraph 51 of the Amended Complaint,
9 and therefore denies them. To the extent that paragraph 51 purports to quote from a
10 document, Mosel refers the Court to the text of that document.

11 52. Mosel admits that it engaged in market research that occasionally
12 included the collection of competitive pricing information. Except as so stated,
13 Mosel denies the allegations of paragraph 52 of the Amended Complaint as they
14 relate to Mosel and states that it lacks knowledge or information sufficient to form a
15 belief as to the truth of the allegations in paragraph 52 of the Amended Complaint
16 as they apply to other Defendants, and therefore denies them. To the extent that
17 paragraph 52 purports to quote from documents, Mosel refers the Court to the text
18 of those documents.

19 53. Mosel denies that it “illegally shared” pricing information or engaged
20 in any other illegal activities. Except as so stated, Mosel avers that it lacks
21 knowledge or information sufficient to form a belief as to the truth of the
22 allegations in paragraph 53 of the Amended Complaint, and therefore denies them.

23 54. Mosel denies the allegations of paragraph 54 of the Amended
24 Complaint as they relate to Mosel. Mosel avers that it lacks knowledge or
25 information sufficient to form a belief as to the truth of the allegations in paragraph
26 54 of the Amended Complaint as they relate to other Defendants, and therefore
27 denies them.

28 55. Mosel admits that DRAM was sold both by contract and on the “spot”

1 market. Mosel further admits that prices on the spot market changed frequently and
2 were publicly available. Except as so stated, Mosel avers that it lacks knowledge or
3 information sufficient to form a belief as to the truth of the allegations in paragraph
4 55 of the Amended Complaint, and therefore denies them.

5 56. Mosel denies the allegations of paragraph 56 of the Amended
6 Complaint as they relate to Mosel. Mosel avers that it lacks knowledge or
7 information sufficient to form a belief as to the truth of the allegations in paragraph
8 56 of the Amended Complaint as they relate to other Defendants, and therefore
9 denies them.

10 57. Mosel denies the allegations in paragraph 57 of the Amended
11 Complaint.

12 58. Mosel denies the allegations of paragraph 58 of the Amended
13 Complaint as they relate to Mosel. Mosel avers that it lacks knowledge or
14 information sufficient to form a belief as to the truth of the allegations in paragraph
15 58 of the Amended Complaint as they relate to other Defendants, and therefore
16 denies them.

17 59. Mosel avers that it lacks knowledge or information sufficient to form a
18 belief as to the truth of the allegations in paragraph 59 of the Amended Complaint,
19 and therefore denies them.

20 60. Mosel denies the allegations of paragraph 60 of the Amended
21 Complaint as they relate to Mosel. Mosel avers that it lacks knowledge or
22 information sufficient to form a belief as to the truth of the allegations in paragraph
23 60 of the Amended Complaint as they relate to other Defendants, and therefore
24 denies them. To the extent that paragraph 60 purports to quote from a document,
25 Mosel refers the Court to the text of that document.

26 61. Mosel avers that it lacks knowledge or information sufficient to form a
27 belief as to the truth of the allegations in paragraph 61 of the Amended Complaint,
28 and therefore denies them. To the extent that paragraph 61 purports to quote from a

1 document, Mosel refers the Court to the text of that document.

2 62. Mosel denies the allegations of paragraph 62 of the Amended
3 Complaint as they relate to Mosel. Mosel avers that it lacks knowledge or
4 information sufficient to form a belief as to the truth of the allegations in paragraph
5 62 of the Amended Complaint as they relate to other Defendants, and therefore
6 denies them. To the extent that paragraph 62 purports to quote from a document,
7 Mosel refers the Court to the text of that document.

8 63. Mosel admits that it engaged in market research that occasionally
9 included the collection of competitive pricing information. Except as so stated,
10 Mosel denies the allegations of paragraph 63 of the Amended Complaint.

11 64. Mosel admits on information and belief that Samsung, Infineon,
12 Hynix, and Elpida pleaded guilty to certain charges, and that the plea agreements
13 speak for themselves. Except as so stated, Mosel avers that it lacks knowledge or
14 information sufficient to form a belief as to the truth of the allegations in paragraph
15 64 of the Amended Complaint, and therefore denies them.

16 65. Mosel admits on information and belief that Samsung pleaded guilty to
17 certain charges. Except as so stated, Mosel avers that it lacks knowledge or
18 information sufficient to form a belief as to the truth of the allegations in paragraph
19 65 of the Amended Complaint, and therefore denies them. To the extent that
20 paragraph 65 purports to quote from a court transcript, Mosel refers the Court to the
21 text of that transcript.

22 66. Mosel admits on information and belief that Hynix pleaded guilty to
23 certain charges. Except as so stated, Mosel avers that it lacks knowledge or
24 information sufficient to form a belief as to the truth of the allegations in paragraph
25 66 of the Amended Complaint, and therefore denies them. To the extent that
26 paragraph 66 purports to quote from a court transcript, Mosel refers the Court to the
27 text of that transcript.

28 67. Mosel denies the allegations of paragraph 67 of the Amended

1 Complaint as they relate to Mosel. Mosel avers that it lacks knowledge or
2 information sufficient to form a belief as to the truth of the allegations in paragraph
3 67 of the Amended Complaint as they relate to other Defendants, and therefore
4 denies them. To the extent that paragraph 67 purports to quote from a court
5 transcript, Mosel refers the Court to the text of that transcript.

6 68. Mosel denies the allegations of paragraph 68 of the Amended
7 Complaint as they relate to Mosel. Mosel avers that it lacks knowledge or
8 information sufficient to form a belief as to the truth of the allegations in paragraph
9 68 of the Amended Complaint as they relate to other Defendants, and therefore
10 denies them. To the extent that paragraph 68 purports to quote from a document or
11 testimony, Mosel refers the Court to the text of that document or original testimony.

12 69. Mosel denies the allegations of paragraph 69 of the Amended
13 Complaint as they relate to Mosel. Mosel avers that it lacks knowledge or
14 information sufficient to form a belief as to the truth of the allegations in paragraph
15 69 of the Amended Complaint as they relate to other Defendants, and therefore
16 denies them.

17 70. Mosel avers that it lacks knowledge or information sufficient to form a
18 belief as to the truth of the allegations in paragraph 70 of the Amended Complaint,
19 and therefore denies them.

20 71. Mosel denies the allegations of paragraph 71 of the Amended
21 Complaint as they relate to Mosel. Mosel avers that it lacks knowledge or
22 information sufficient to form a belief as to the truth of the allegations in paragraph
23 71 of the Amended Complaint as they relate to other Defendants, and therefore
24 denies them.

25 72. Mosel avers that it lacks knowledge or information sufficient to form a
26 belief as to the truth of the allegations in paragraph 72 of the Amended Complaint,
27 and therefore denies them.

28 73. Mosel avers that it lacks knowledge or information sufficient to form a

1 belief as to the truth of the allegations in the first sentence of paragraph 73 of the
2 Amended Complaint. Mosel avers that the allegations in the second sentence of
3 paragraph 73 of the Amended Complaint constitute legal contentions and
4 conclusions to which no response is required. To the extent a response to the
5 allegations in the second sentence of paragraph 73 of the Amended Complaint is
6 required, Mosel denies them.

7 74. Mosel avers that it lacks knowledge or information sufficient to form a
8 belief as to the truth of the allegations in paragraph 74 of the Amended Complaint,
9 and therefore denies them.

10 75. Mosel avers that it lacks knowledge or information sufficient to form a
11 belief as to the truth of the allegations in paragraph 75 of the Amended Complaint
12 as they relate to other Defendants, and therefore denies them. To the extent that
13 paragraph 75 purports to quote from a contract, Mosel refers the Court to the text of
14 that contract.

15 76. Mosel avers that it lacks knowledge or information sufficient to form a
16 belief as to the truth of the allegations in paragraph 76 of the Amended Complaint,
17 and therefore denies them.

18 77. Mosel avers that it lacks knowledge or information sufficient to form a
19 belief as to the truth of the allegations in paragraph 77 of the Amended Complaint,
20 and therefore denies them.

21 78. Mosel avers that it lacks knowledge or information sufficient to form a
22 belief as to the truth of the allegations in paragraph 78 of the Amended Complaint,
23 and therefore denies them.

24 79. Mosel avers that it lacks knowledge or information sufficient to form a
25 belief as to the truth of the allegations in paragraph 79 of the Amended Complaint,
26 and therefore denies them.

27 80. Mosel avers that the allegations in paragraph 80 of the Amended
28 Complaint constitute legal contentions and conclusions to which no response is

1 required. To the extent a response to the allegations in paragraph 80 of the
2 Amended Complaint is required, Mosel denies them.

3 **CLAIMS FOR RELIEF**

4 ***First Claim (Violation of Section 1 of the Sherman Act)***

5 81. Mosel denies the allegations in paragraph 82 of the Amended
6 Complaint.

7 82. Mosel denies the allegations in paragraph 83 of the Amended
8 Complaint.

9 83. Mosel denies the allegations in paragraph 84 of the Amended
10 Complaint, including each subpart thereof.

11 84. Mosel avers that the allegations in paragraph 84 of the Amended
12 Complaint constitute legal contentions and conclusions to which no response is
13 required. To the extent a response to the allegations in paragraph 84 of the
14 Amended Complaint is required, Mosel denies them.

15 85. Mosel denies the allegations in paragraph 85 of the Amended
16 Complaint.

17 86. Mosel avers that the allegations in paragraph 86 of the Amended
18 Complaint constitute legal contentions and conclusions to which no response is
19 required. To the extent a response to the allegations in paragraph 86 of the
20 Amended Complaint is required, Mosel denies them.

21 ***Second Claim (Violation of the Donnelly Act, N.Y. Gen. Bus. L. § 340 et seq.)***

22 87. Mosel denies the allegations in paragraph 87 of the Amended
23 Complaint.

24 88. Mosel denies the allegations in paragraph 88 of the Amended
25 Complaint.

26 89. Mosel denies the allegations in paragraph 89 of the Amended
27 Complaint, including each subpart thereof.

28 90. Mosel avers that the allegations in paragraph 90 of the Amended

1 Complaint constitute legal contentions and conclusions to which no response is
2 required. To the extent a response to the allegations in paragraph 90 of the
3 Amended Complaint is required, Mosel denies them.

4 91. Mosel denies the allegations in paragraph 91 of the Amended
5 Complaint.

6 92. Mosel avers that the allegations in paragraph 92 of the Amended
7 Complaint constitute legal contentions and conclusions to which no response is
8 required. To the extent a response to the allegations in paragraph 92 of the
9 Amended Complaint is required, Mosel denies them.

10 93. Mosel avers that the allegations in paragraph 93 of the Amended
11 Complaint constitute legal contentions and conclusions to which no response is
12 required. To the extent a response to the allegations in paragraph 93 of the
13 Amended Complaint is required, Mosel denies them.

14 ***Third Claim (Violation of the Donnelly Act, N.Y. Gen. Bus. L. § 340 et seq.)***

15 94. Mosel denies the allegations in paragraph 94 of the Amended
16 Complaint.

17 95. Mosel denies the allegations in paragraph 95 of the Amended
18 Complaint.

19 96. Mosel denies the allegations in paragraph 96 of the Amended
20 Complaint, including each subpart thereof.

21 97. Mosel avers that the allegations in paragraph 97 of the Amended
22 Complaint constitute legal contentions and conclusions to which no response is
23 required. To the extent a response to the allegations in paragraph 97 of the
24 Amended Complaint is required, Mosel denies them.

25 98. Mosel denies the allegations in paragraph 98 of the Amended
26 Complaint.

27 99. Mosel avers that the allegations in paragraph 99 of the Amended
28 Complaint constitute legal contentions and conclusions to which no response is

1 required. To the extent a response to the allegations in paragraph 99 of the
2 Amended Complaint is required, Mosel denies them.

3 100. Mosel avers that the allegations in paragraph 100 of the Amended
4 Complaint constitute legal contentions and conclusions to which no response is
5 required. To the extent a response to the allegations in paragraph 100 of the
6 Amended Complaint is required, Mosel denies them.

7 ***Fourth Claim (N.Y. Exec. L. 63 (12))***

8 101. Mosel denies the allegations in paragraph 101 of the Amended
9 Complaint.

10 102. Mosel avers that the allegations in paragraph 102 of the Amended
11 Complaint constitute legal contentions and conclusions to which no response is
12 required. To the extent a response to the allegations in paragraph 102 of the
13 Amended Complaint is required, Mosel denies them.

14 103. Mosel avers that the allegations in paragraph 103 of the Amended
15 Complaint constitute legal contentions and conclusions to which no response is
16 required. To the extent a response to the allegations in paragraph 103 of the
17 Amended Complaint is required, Mosel denies them.

18 **ANSWER TO PLAINTIFFS' PRAYER FOR RELIEF**

19 104. Answering the Prayer for Relief in toto, Mosel denies that Plaintiff is
20 entitled to any of the relief sought in the Amended Complaint or to any relief
21 whatsoever against Mosel by virtue of the Amended Complaint.

22 **SEPARATE AND ADDITIONAL DEFENSES**

23 Without assuming any burden that it would not otherwise bear, and reserving
24 its right to amend its Answer to assert additional defenses as they may become
25 known during discovery, Mosel asserts the following separate and additional
26 defenses:

27 1. Plaintiff's Amended Complaint fails to state a claim upon which relief
28 can be granted.

1 2. Plaintiff's claims are barred, in whole or in part, because any alleged
2 act or conduct by Mosel was reasonable and justified as a bona fide business
3 competition in pursuit of legitimate business interests and therefore is privileged.

4 3. Plaintiff's claims are barred, in whole or in part, by the applicable
5 statutes of limitations.

6 4. Plaintiff's claims are barred, in whole or in part, for failing to join
7 indispensable parties. Certain entities, whom New York claims have assigned to
8 New York their claims against Mosel as direct purchasers of DRAM, are required
9 to be joined to this action if feasible.

10 5. Plaintiff's claims are barred, in whole or in part, by the equitable
11 doctrine of laches.

12 6. Plaintiff's claims are barred, in whole or in part, by the equitable
13 doctrine of waiver.

14 7. Intentionally omitted.

15 8. Plaintiff's claims are barred, in whole or in part, because Plaintiff
16 failed to plead conspiracy with sufficient particularity.

17 9. Plaintiff's claims are barred, in whole or in part, because Plaintiff lacks
18 antitrust standing under the principles articulated in *Associated General*
19 *Contractors of California v. California State Council of Carpenters*, 459 U.S. 519
20 (1983).

21 10. Intentionally omitted.

22 11. Intentionally omitted.

23 12. Plaintiff's claims are barred, in whole or in part, because any and all of
24 Mosel's conduct has been reasonable and based on independent, legitimate business
25 and economic justifications.

26 13. Plaintiff's claims are barred, in whole or in part, because any actions
27 taken by Mosel did not lessen competition in the relevant market.

28 14. Plaintiff's claims are barred, in whole or in part, because the asserted

1 statutes are not applicable to the alleged conduct that occurred outside of New York
2 or the United States or that was not illegal where it occurred.

3 15. Intentionally omitted.

4 16. Intentionally omitted.

5 17. Plaintiff's claims are barred, in whole or in part, because Plaintiff's
6 claimed injuries and damages, if any, were not proximately caused by any acts or
7 omissions of Mosel.

8 18. Plaintiff's claims are barred, in whole or in part, because Plaintiff has
9 not suffered actual, cognizable injury under the antitrust laws.

10 19. Plaintiff's claims are barred, in whole or in part, because Plaintiff
11 failed to take all necessary, reasonable and appropriate actions to mitigate the
12 injuries and damages alleged in the Amended Complaint, the fact and extent of
13 which are expressly denied by Mosel.

14 20. Plaintiff's claims are barred, in whole or in part, because Plaintiff has
15 no injury or damage as a result of the matters alleged in the Amended Complaint.

16 21. The relief sought by Plaintiff is barred, in whole or in part, because the
17 alleged damages sought are too speculative and uncertain, and because of the
18 impossibility of the ascertainment and allocation of such alleged damages.

19 22. Plaintiff's claims are barred, in whole or in part, because Plaintiff
20 would be unjustly enriched if allowed to recover any part of the damages alleged in
21 the Amended Complaint.

22 23. Plaintiff's claims are barred, in whole or in part, to the extent they seek
23 damages that are duplicative of damages sought in other actions and would
24 therefore violate the Due Process Clauses of the Fifth and Fourteenth Amendments
25 to the United States Constitution as well as the Due Process provisions of the
26 California Constitution and that of other states.

27 24. Plaintiff's claims are barred, in whole or in part, because any injury or
28 damages alleged in the Amended Complaint, the fact and extent of which Mosel

1 denies, were not incurred by or passed on to Plaintiff by any alleged direct
2 purchasers of DRAM or intermediate purchasers or resellers, or were incurred by or
3 passed on to persons or entities other than Plaintiff.

4 25. Plaintiff's claims are barred, in whole or in part, because Plaintiff
5 failed to allege fraudulent concealment by Mosel with sufficient particularity.

6 26. To the extent that Mosel is found liable for damages, the fact and
7 extent of which Mosel expressly denies, such damages must be reduced in
8 proportion to Mosel's degree of fault.

9 27. Without admitting the existence of any contract, combination, or
10 conspiracy in restraint of trade, Mosel is entitled to set off any amounts paid to
11 Plaintiff by any other Defendants who have settled Plaintiff's claims against them
12 in this matter or by any alleged co-conspirators with which Plaintiff entered into a
13 covenant not to sue or other agreement, or which Plaintiff expressly or impliedly
14 relinquished in any such settlement, covenant not to sue, or other agreement with
15 Defendants or alleged co-conspirators.

16 28. To the extent that Plaintiff purports to state claims under state statutes
17 for alleged injuries arising from alleged conduct or injuries outside the state,
18 Plaintiff lacks standing to sue for the alleged injuries and this Court is without
19 subject matter jurisdiction to hear Plaintiff's claims.

20 29. Plaintiff's claims are preempted by state and/or federal law.

21 30. Plaintiff's claims are barred, in whole or in part, because Plaintiff
22 passed on any alleged overcharges, the fact and extent of which Mosel expressly
23 denies, to other persons.

24 31. Plaintiff's claims are barred, in whole or in part, because Plaintiff
25 failed to plead fraud or misrepresentation with sufficient particularity.

26 32. Plaintiff's claims are barred, in whole or in part, because Plaintiff did
27 not detrimentally rely on any alleged representations or conduct by Mosel.

28 33. Plaintiff has failed to state a claim for injunction insofar as it seeks to

1 enjoin alleged events that have already transpired without the requisite showing of
2 threatened future harm or continuing harm or because it is not a remedy at all under
3 the relevant statutes.

4 34. Plaintiff's claims are barred, in whole or in part, because the restitution
5 Plaintiff seeks is punitive and excessive.

6 35. Plaintiff's claims are barred, in whole or in part, because the remedies
7 sought are unconstitutional and contrary to public policy.

8 36. Plaintiff's claims are barred, in whole or in part, because the alleged
9 conduct of Mosel and the other defendants has not unreasonably restrained trade.

10 37. Plaintiff's claims are barred, in whole or in part, because the Amended
11 Complaint does not adequately define the relevant market or markets allegedly
12 affected by the alleged conduct of Mosel that is the subject of the Amended
13 Complaint.

14 38. Recovery of punitive or exemplary damages based on the conduct
15 alleged in the Amended Complaint and/or recovery of attorneys' fees is barred
16 under various state laws.

17 39. Plaintiff's claims are barred, in whole or in part, to the extent such
18 claims seek the extraterritorial application of state law.

19 40. Plaintiff is not entitled to the requested equitable relief because the
20 injuries and damages alleged in the Amended Complaint, the fact and extent of
21 which are expressly denied by Mosel, would be adequately compensated in an
22 action at law for damages.

23 41. Mosel reserves the right to assert other defenses and affirmative
24 defenses as this action proceeds.

25 42. Mosel adopts by reference any defense pled by any other defendant
26 that is not otherwise set forth herein and is not inconsistent with those set forth
27 herein.
28

PRAYER FOR RELIEF

WHEREFORE, Mosel Vitelic Inc. and Mosel Vitelic Corporation pray as follows:

1. That Plaintiff takes nothing by way of the Amended Complaint, and the action be dismissed with prejudice;
2. That judgment be entered in favor of Mosel Vitelic Inc. and Mosel Vitelic Corporation and against Plaintiff with respect to all causes of action in the Amended Complaint;
3. That the Court award Mosel Vitelic Inc. and Mosel Vitelic Corporation their attorney's fees and all other costs reasonably incurred in defense of this action; and
4. That the Court award such other relief that it deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Defendants Mosel Vitelic Inc. and Mosel Vitelic Corporation hereby demand a jury trial.

Dated: February 4, 2009

STEPHEN V. BOMSE
DAVID C. BROWNSTEIN
Orrick, Herrington & Sutcliffe LLP

/s/ David C. Brownstein

DAVID C. BROWNSTEIN
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MOSEL VITELIC INC. and
MOSEL VITELIC CORPORATION